

REMARKS

Reconsideration of the Office Action of December 21, 2007 is respectfully requested.

Included herewith is an Information Disclosure Statement with associated fee citing the references described in the background of the present application.

Claims 1, 3-10, 12-15, 18 and 19 are pending in this application and have been rejected in the Office Action.

To summarize the claim changes made in this Amendment, claims 1 and 10 have been amended and new claims 20 to 27 have been added. Support for new claims 20 to 27 is found on, for example, lines 10 to end on page 7 and on lines 1 to 14 on page 8 of the PCT publication. Accordingly, no new matter is considered to be introduced by these amendments.

Formalities

The Examiner has objected to the drawings as not clearly showing opening 17. Accompanying this Amendment is a new drawing sheet containing new Figure 1A showing an enlarged view of the distal end of the metering tube with opening 17. Support for Figure 1A is found, for example, in the PCT published Figures 1 to 4 showing a break in the cross-hatching. Included with this Amendment is Exhibit A which contains the informal original PCT filed drawing sheets also showing the break in cross hatching defining the opening 17. Reference is also made to the original application disclosure as in, for example, page 5, lines 23 plus of the PCT publication as well as page 6, line 35 which sets forth "the opening 17 is in fluid communication with the medicament in the chamber 4". Accordingly, it is respectfully submitted that no new matter is presented by the inclusion of the new Figure 1A.

The specification has been amended to reference the new Figure 1A.

35 U.S.C. § 102(b) Rejections

The Examiner has further rejected claims 1, 3-10, 12-15, 18 and 19 under 35 U.S.C. 102(b) as being anticipated by Fuchs (U.S. Patent No. 5,147,087). Based on the discussion

below it is respectfully submitted that current independent claims 1 and 10 represent claims that are in condition for allowance.

In rejecting claim 1 there is set forth the following in the Office Action:

Fuchs discloses (see Figure 2) a dosing device having a housing, metering tube (combined device, (9)), the metering tube having an access opening (39) from the interior, the housing having a chamber (15) to hold medicament, where the metering tube extends to as dispensing position and the access opening is in communication with the chamber when the metering tube is filling.

Further, relative to claim 10 there was set forth the following:

As per claims 10, 12-15 by all accounts: in a handheld inhaler, the piston (11) retracts the metering tube with itself for a filling position, thus drawing medicament from the chamber, and then extends the tube (9) to a dispensing position and before expelling the medicament as a mist as cited above

A review of US Pat. No. 5,147,087 to Fuchs in its entirety, however, reveals that it fails to anticipate or render obvious independent claims 1 and 10 of the present application. That is, Fuchs discloses a discharging apparatus 1 having a thrust piston pump 2 wherein, upon operation of return spring 20, combined device 9, represented by both outer pump piston 10 and pre-suction piston 11, moves to a standby state. This movement of elements 10 and 11 together leads to container fluid passing through inlet passage 19, port 39 and into chamber 14 defined by housing 12.

Upon an operator pressing handle 22 down, both elements 10 and 11 move together down within housing 14. When the pressure of the fluid trapped within chamber 14 reaches a predetermined level, the pressure acting on outlet valve 23 is sufficient to depress interior element 11 relative to outer element 10 to enable release of the pressurized fluid.

Claim 1 currently sets forth that said metering tube is "extendable to a dispensing position in which said opening is displaced out of said housing for dispensing medicament from the dispensing apparatus". As seen from the discussion above concerning Fuchs, the

combined device 9 fails to extend to a position wherein the opening is displaced out of the housing for dispensing medicament from the dispensing apparatus. In other words, the opening 39 in Fuchs for receiving fluid fails to move to a location which allows for dispensing of medicament outside of the chamber in which opening 39 is positioned during intake. Accordingly, claim 1 is respectfully submitted to be allowable as presented.

A review of claim 10 relative to Fuchs reveals the same deficiencies as described above for claim 1. For example, claim 10 indicates “extending said metering tube to a dispensing position in which said opening is displaced out of said housing for dispensing medicament from the dispensing apparatus”. Thus, claim 10 is also respectfully submitted to be allowable as presented.

Relative to new independent claims 24 and 26, in the Office Action the metering tube of the claimed invention is equated with the “combined device 9” of Fuchs, which comprises elements 10 and 11 as described above. Accordingly, if combined device 9 (or exterior element 10) represents the metering tube of the claimed invention, it cannot be said that there exists a piston for drawing medicament into said metering tube. This is because both elements 10 and 11 move in unison except for the one instance when interior element 11 moves relative to outside element 10 during a release at valve 23 of the pressurized fluid. In other words, at no time does the interior “piston” element 11 move with respect to element 10 during a time when fluid is being placed within chamber as the combination 9 moves down into a higher pressure state. Therefore, there is lacking a piston that draws medicament into the “metering tube” by way of an adjustment relative to the metering tube as claimed in apparatus claim 24 and method claim 26.

For the reasons set out above it is respectfully submitted that independent claims 1, 10, 24 and 26 stand in condition for allowance.

Applicants respectfully submit that the application as a whole stands in condition for allowance and confirmation of the same at the Examiner’s earliest convenience is earnestly solicited.

U.S. Patent Application Serial No. 10/554,084
Attorney Docket No. 033335R028

Also, if any fees are due in connection with the filing of this Amendment, such as fees under 37 C.F.R. §§ 1.16 or 1.17, please charge the fees to Deposit Account 02-4300; Order No.033335R028.

Respectfully submitted,

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EXHIBIT A

REPLACED

21 APR 2004

FILED

21 FEB 2004

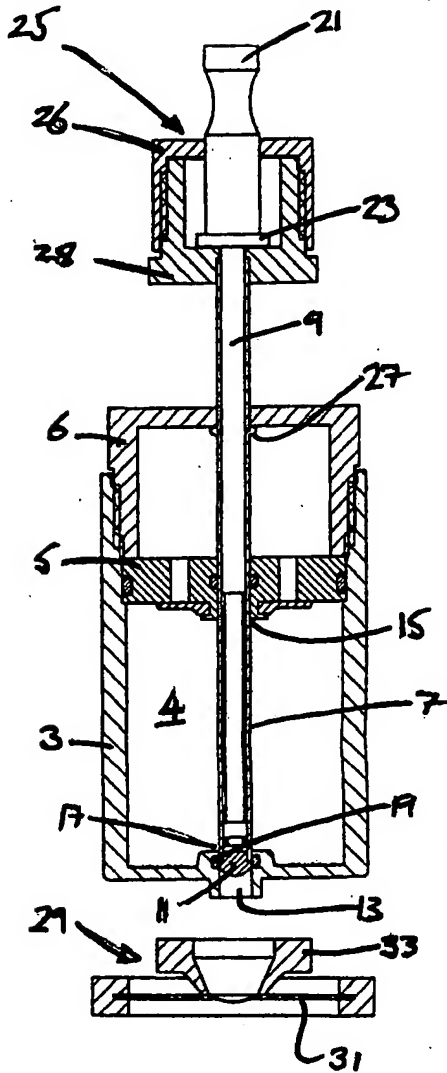


FIG. 1

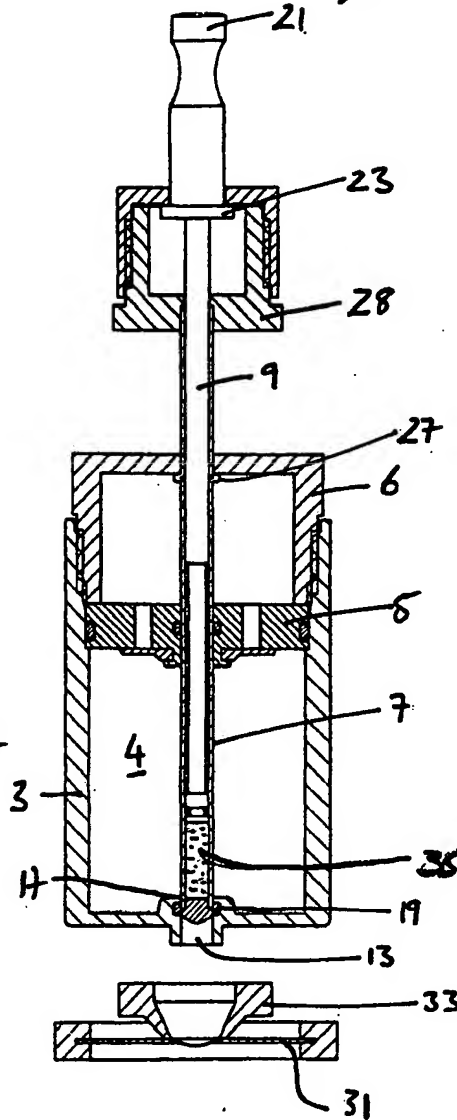


FIG. 2

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21 APR 2004

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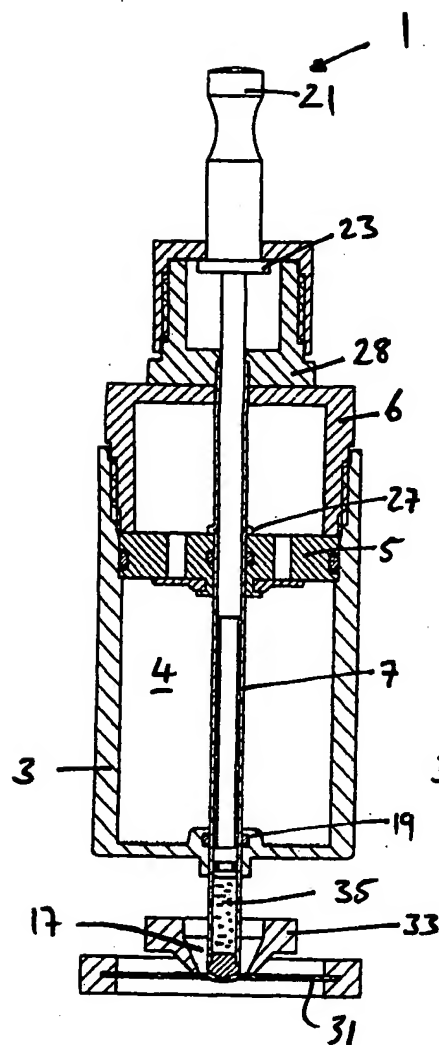


Fig. 3

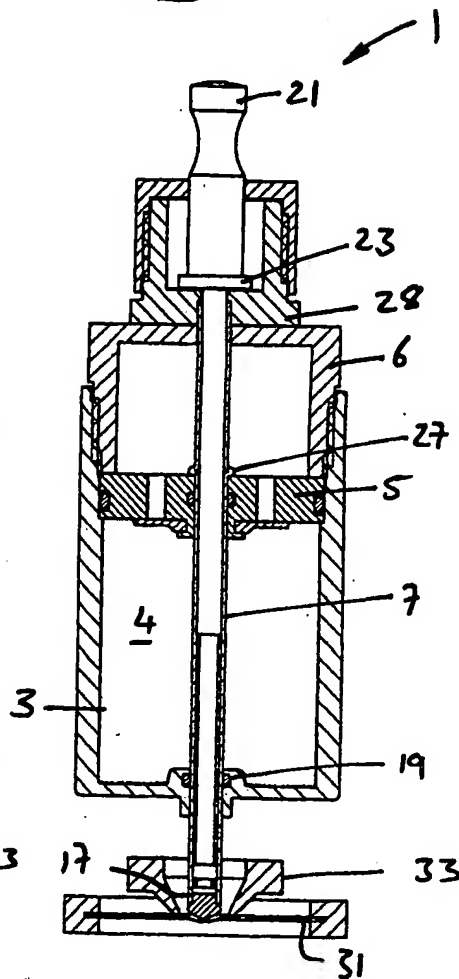


Fig. 4